

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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|---------------------------------------|---|----------------------------------|
| In re: | : | |
| | : | Bankruptcy No. 18-70870-JAD |
| LARRY FREDERICK and SHARON FREDERICK, | : | |
| | : | Chapter 11 |
| <u>Debtors.</u> | : | |
| | : | Doc No. _____ |
| LARRY FREDERICK and SHARON FREDERICK, | : | |
| | : | Related to Doc No. 175 |
| Movants, | : | |
| | : | Objection Due: 1/19/21 @ noon |
| <u>NO RESPONDENT.</u> | : | Hearing Date: 1/20/21 @ 10:30 AM |

**OBJECTION OF GROWMARK FS LLC AND FS FINANCIAL SERVICES, LLC TO EXPEDITED
APPLICATION FOR APPROVAL OF REAL ESTATE BROKER**

GROWMARK FS, LLC and FS Financial Services, LLC (collectively “**Growmark**”) file this Objection to the Expedited Application for Approval of Real Estate Broker [ECF 175] (the “**Application**”) filed by the Debtors:

1. Growmark has a secured claim and a perfected priority security interest in all of the Debtors’ personal property, including, without limitation, their livestock and equipment. Growmark has filed Proofs of Claim at Claim Nos. 19 and 20 in this Bankruptcy Case (the “**Growmark Claims**”).
2. To date, no objection has been filed to the Growmark Claims and the Growmark Claims are entitled to a presumption of validity. Federal Rule of Bankruptcy Procedure 3001(f); 11 U.S.C. § 502(a).
3. The Application filed by the Debtors refers to a Motion to Approve Stipulation and Consent Order Settling Contested Matters Between Debtors and M&T Bank and Establishing Asset Sale Process [ECF 173] (the “**Motion to Approve**”).
4. The objection deadline for the Motion to Approve is January 26, 2021. Growmark has significant issues with the relief sought in the Motion to Approve and will file an objection by the applicable deadline.

5. In the Application, the Debtors seek approval of a Listing Contract that includes terms and conditions that are contained in Motion to Approve, including, without limitation, provisions that the purchaser of any property will assume the Seller's "obligation owing to Growmark FS LLC and FS Financial Services, LLC in the approximate amount of \$260,000, to the extent said obligation constitutes a lien on the Frederick Road Properties". See Exhibit "A" to Application at p. 7-8. The Debtors and M&T have not at all negotiated this treatment with Growmark and no provision of the Bankruptcy Code allows the Debtors and M&T to force this treatment on Growmark, especially given its presumptively valid secured claim on the Debtors' personal property.

6. As this Court is aware from prior filings in this Bankruptcy Case, there is a lien priority dispute between M&T and Growmark over the priority of their respective liens on and in the Debtors' personal property. See *e.g.*, ECF 135.

7. Growmark does not object *per se* to the retention of a broker by the Debtors and the payment of a 6% commission to the Broker in accordance with the Listing Agreement attached to the Application. Growmark does object, however, to not being paid from the proceeds of the sale of the properties on account of its secured claim and to the granting of this Application having any preclusive effect in any dispute by and among the Debtors, M&T, Growmark, and any other parties.

8. Growmark requests that should this Court grant the Application, that it expressly reserve all rights of Growmark to object to the Motion to Approve (as well as any other pleadings filed by the Debtors, M&T, or any other party in this Bankruptcy Case) and hold that nothing in the approval of this Application will prejudice, have preclusive effect, and/or determine any issue against Growmark.

WHEREFORE, Growmark respectfully requests that, to the extent this Honorable Court grants the Application, that it use the form of Order attached to this Objection which expressly reserves all rights of Growmark and holds that the granting of the Application will not have any preclusive effect in any future dispute by and among the Debtors, M&T, Growmark, and any other parties.

Dated: January 19, 2021

Respectfully submitted,

/s/ Michael A. Shiner

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